

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, March 10, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Steve Duvall, Greg Schwinn, Cecil Steward, Rick Wallace and Joe Wilson (Ann Bleed, Barbara Hopkins and Gerry Krieser absent); John Bradley, Mike DeKalb, Jennifer Dam, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Vice-Chair, Russ Bayer called the meeting to order and requested a motion approving the minutes for the meeting held February 24, 1999. Motion to approve made by Duvall, seconded by Schwinn and carried 6-0: Bayer, Duvall, Schwinn, Steward, Wallace and Wilson voting 'yes'; Bleed, Hopkins and Krieser absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

March 10, 1999

Members present: Bayer, Duvall, Schwinn, Steward, Wallace and Wilson; Bleed, Hopkins and Krieser absent.

The Consent Agenda consisted of the following items: **FINAL PLAT NO. 98003, TIMBER RIDGE 1<sup>ST</sup> ADDITION; COMPREHENSIVE PLAN CONFORMANCE NO. 99001; and ANNEXATION NO. 98017.**

Schwinn moved to approve the Consent Agenda, seconded by Wilson and carried 6-0: Bayer, Duvall, Schwinn, Steward, Wallace and Wilson voting 'yes'; Bleed, Hopkins and Krieser absent.

**CHANGE OF ZONE NO. 3165**  
**FROM O-2 SUBURBAN OFFICE**  
**TO R-6 RESIDENTIAL**  
**and**  
**SPECIAL PERMIT NO. 552A**  
**TO AMEND EASTMONT TOWERS**  
**ON PROPERTY GENERALLY LOCATED**  
**AT 6315 "O" STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 10, 1999

Members present: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Planning staff recommendation: Approval of the Change of Zone and Conditional Approval of the Special Permit.

Jennifer Dam of the Planning staff submitted a letter from the applicant withdrawing Special Permit No. 552A, and requesting that Change of Zone No. 3165 be placed on pending and deferred until the applicant is able to file a new special permit application.

Wallace moved to place Change of Zone No. 3165 on pending, seconded by Steward and carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

Proponents

1. **Robert P. Chickwood**, 1828 Riviera Drive, **Executive Director of Christian Retirement Homes, Inc.**, explained that this is a hospice house project. They were seeking to purchase this home and convert it into a hospice home; however, last Friday the sellers decided to remain in their home and this changes the approach at this time. Therefore, the applicant is requesting additional time to get a new special permit back into the process. The applicant agrees that the change of zone be placed on pending.

**CHANGE OF ZONE NO. 3166,**  
**TEXT AMENDMENT REGARDING GARDEN CENTERS,**  
**and**  
**SPECIAL PERMIT NO. 1761**  
**FOR A GARDEN CENTER**  
**AT 500 NO. 66<sup>TH</sup> STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 10, 1999

Members present: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Planning staff recommendation: Approval of Change of Zone No. 3166, with additional language, and conditional approval of Special Permit No. 1761.

The applicant was not present.

There was no testimony in opposition.

Public hearing was closed.

**CHANGE OF ZONE NO. 3166**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 10, 1999

Duvall moved approval of the Planning staff recommendation, seconded by Steward.

Wilson inquired whether staff worked with the applicant on the text amendment. Jennifer Dam of Planning staff stated that the staff did work together with the applicant on the text amendment and were able to reach agreement.

Steward confirmed that the staff is satisfied with the general definition of what goes on in a garden center. Ms. Dam stated that the activities are detailed in the special permit and nothing else can be expanded unless the special permit is amended. Staff is satisfied because what can go on is currently allowed in AG and AGR. This text amendment allows the use in R-2 and it is a little more restrictive.

Motion for approval of the staff recommendation carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

**SPECIAL PERMIT NO. 1761**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 10, 1999

Steward moved to approve the staff recommendation of conditional approval, seconded by Duvall and carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

**COMPREHENSIVE PLAN CONFORMITY NO. 99002**

**and**

**COMPREHENSIVE PLAN CONFORMITY NO. 99003,**

**DOWNTOWN BUSINESS IMPROVEMENT DISTRICT**

**BASE MANAGEMENT DISTRICT AND OVERLAY**

**MANAGEMENT DISTRICT.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 10, 1999

Members present: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Planning staff recommendation: A finding of conformance with the Comprehensive Plan.

Bayer and Steward stated that they believe they should declare a conflict of interest due to property ownership in the proposed area of the BID.

Rick Peo of the City Attorney's Office suggested that it would be appropriate for Bayer, Wilson and Steward to file potential conflicts with the Accountability and Disclosure Commission to find out whether they actually have a conflict. There is a direct financial interest, but he is not certain that it is so significant that it would be unlawful to participate. He suggested that the members owning property in the BID area could potentially declare a conflict at this time, and in the next two weeks seek the advice of the Accountability and Disclosure Commission.

Bayer stated that he would prefer to get an opinion from the Accountability and Disclosure Commission. Without Bayer and Steward, the Commission no longer has a quorum and the public hearing on this item cannot be held.

These items are held over for public hearing on March 24, 1999.

Mike DeKalb of Planning staff also advised that there was a typographical error in the legal ad and the items will be republished for hearing on March 24, 1999.

**SPECIAL PERMIT NO. 1610B**

**TO EXPAND AN ELDERLY HOUSING DEVELOPMENT**

**ON PROPERTY LOCATED AT**

**NORTH 56<sup>TH</sup> STREET AND FREMONT STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 10, 1999

Members present: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer; Hopkins, Bleed and Krieser absent.

Planning staff recommendation: Deferral for correct legal advertising.

Wilson made a motion to defer with public hearing and administrative action on March 24, 1999, seconded by Wallace and carried 6-0: Wallace, Wilson, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

**CHANGE OF ZONE NO. 3164,**  
**TEXT AMENDMENT REGARDING TEMPORARY**  
**PAVING PLANTS.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** March 10, 1999

Members present: Wallace, Wilson, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Planning staff recommendation: Approval, with revisions.

Proponents

**1. Mark Hunzeker** appeared on behalf of the applicant. This application is to amend the text to permit concrete batch plants in all districts under certain conditions.

**2. Joe Delgado, President of TCW Construction, Incorporated,** formerly known as Tony's Cement Works, testified as the applicant. Mr. Delgado received a construction management degree from UNL; prior to that he worked in the construction industry for his father well before College; after graduation he worked for Kiewit for 5-6 years; and the last 15 years he has been working in the Lincoln area for his father. The company has grown from patio and driveway work in the Lincoln area to paving infrastructure for new development in and around the Lincoln area. They have done paving and heavy construction for the Department of Roads. In the last year, Tony's Cement Works has had a family succession plan in place. He and his brothers have taken over his father's company. In 25 years, they have invested heavily in construction equipment and personnel. They are now contemplating investing in a portable batch plant so that they can produce their own material. Mr. Delgado agreed with the staff recommendation as set forth in the staff report dated March 2, 1999; however, they have questions about #5 and #8 under 27.71.120(c)b.

Mr. Hunzeker stated that they met with city staff after the initial application was filed in order to work out some concerns that the staff had. This application was substantially redrafted and resubmitted prior to the publication of this agenda, and, according to Mr. Hunzeker, the staff report has added some conditions which were not specifically part of their discussions. The concerns relate to the possibility of

taking concrete that is produced on the site and transporting it off-site. One of their major contracts is construction of the streets in Vintage Heights, but it would probably not keep the plant fully occupied at all times. There are other jobs that his company has contracted to do in various locations across the community. They want to be able to take some of that material off-site for other jobs. Mr. Hunzeker has requested that another meeting be set up with staff to work further on this proposal. Mr. Hunzeker does not believe the staff was intending to be as restrictive as it might appear. Therefore, Mr. Hunzeker requested a two-week deferral to meet once again with the staff to get the final language worked out. He believes they will be able to reach an agreement within the two weeks.

Bayer asked the applicant if they have a permanent plant. Mr. Delgado stated, "no". Wherever we go to pave, we use the closest local material supplier." This amendment would allow them to produce their own material.

Wallace asked whether the applicant would use this plant for the duration of the Vintage Heights project and then move it somewhere else. Mr. Delgado stated that they would not be able to leave it in a specific site as the houses are built. Mr. Hunzeker also clarified that it is very possible that it would set up early this spring at Vintage Heights and then move to another location sometime during the year and then move back to Vintage Heights later in the construction season. It can be set up at a different site within two days. It is likely that it could move back and forth, but the conditions would be in place to require that it not be there once residential uses, schools, churches, libraries, etc., are developed within 300'. There are regulations by the Health Department as far as dust and noise. Mr. Delgado advised that they do have transit trucks to haul the material.

Steward's concern is that there be some other place to put this plant that is at the public's convenience—not the owner's. He does not believe having it sit and wait until the next project site is necessarily in the public's best interest. Mr. Delgado stated that they would be prepared to relocate it. Mr. Hunzeker stated that this permit will expire annually, on December 31<sup>st</sup>, and they must reapply and have it reissued. They have an industrially zoned site where the construction company is located where this facility could be set up in the event there is no project. It is not economical to have the plant sitting idle. For example, at Vintage Heights, they will probably have the equivalent of about 1200 truck loads of concrete poured during the summer of 1999. This saves a lot of truck traffic on the city streets.

Steward posed the question, is this appropriate in all zoning districts? Mr. Hunzeker believes that answer is "yes", and he believes they have addressed this with staff in the meetings they have had. Most of the property will be zoned R-3 but it will be vacant farmland and will not be in the middle of a neighborhood. The issue will be how close the houses, schools, hospitals, etc., are located.

There was no testimony in opposition.

Steward called to the attention of staff, on p.111, that under "Environmental Concerns" in the last paragraph, residences are not mentioned yet they are in every other place. Jennifer Dam of Planning staff indicated that she would bring this to Mr. Hill's attention as they work on the revised language.

Wallace moved to continue public hearing and administrative action on March 24, 1999, seconded by Schwinn and carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

**AMENDMENT #11, PURSUANT TO THE  
1999 COMPREHENSIVE PLAN ANNUAL REVIEW,  
TO INCREASE THE NUMBER OF LANES AND  
RIGHT-OF-WAY WIDTH OF EAST "O" STREET  
BETWEEN 52<sup>ND</sup> STREET AND WEDGEWOOD DRIVE.  
CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** March 10, 1999

Members present: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Steve Henrichsen of Planning staff requested an additional two-week deferral to March 24, 1999.

Duvall moved to continue public hearing and administrative action on March 24, 1999, seconded by Steward and carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

**CHANGE OF ZONE NO. 2531AA,  
WILLIAMSBURG VILLAGE FINAL P.U.D.,  
ON PROPERTY GENERALLY LOCATED  
BETWEEN SO. 38<sup>TH</sup> STREET AND SO. 40<sup>TH</sup> STREET,  
NORTH OF PINE LAKE ROAD.  
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** March 10, 1999

Members present: Wallace, Wilson, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Steve Henrichsen of Planning staff submitted four additional letters: 1) in support from the former director of Gramercy Hill; 2) from Bob Hampton regarding progress in meeting with neighbors—as of Tuesday, March 9th, he had received 72 postcards in favor and 9 opposed—they did not reach consensus but he believes they are making progress; agrees that there is need for a curb cut on Pine Lake Road; 3) fax from Melissa Folsom, President of Williamsburg Village Homeowners Association, in

opposition; and 4) from Kent W. Folsom, 3810 Old Dominion Court, in opposition, with additional information on the traffic impacts--based on ITE manual, this use would generate more trips than 26 single family homes, with overall trips of 592 vs. 249 for single family. With regard to site size, Mr. Folsom had discussions with a professor of geriatrics, concluding that senior housing is looking for more open space than is shown on this site plan.

Bayer noted that the Commissioners also received three new letters in support since the last meeting.

Schwinn moved to approve the staff recommendation of conditional approval, seconded by Wilson.

Bayer stated that he will support the plan, but not with the increased height.

Bayer made a motion to amend to delete Condition #1.1.2, seconded by Wilson. Bayer commented that one of the concerns of the neighbors has to do with traffic. He believes that by deleting this condition and allowing access to Pine Lake Road it will help the traffic issue. Wallace believes it might increase the traffic. Bayer thinks it would eliminate some of the traffic in the neighborhood.

Motion to amend to delete Condition #1.1.2 carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

Steward stated that he will vote in opposition to the motion of approval. The greatest resistance and the greatest opposition has come from the adjacent owners and not so much from other residents deeper into the development, and that is to be expected and is natural. What is disturbing to him is that it was approved as a PUD with a very specific plan for the land use of the entire development. If in fact the circumstances have changed, the residents who bought adjacent property did not have access to that information. Landowners have put their faith in their purchase and he is not convinced that enough time or effort has gone into a search for residential alternatives rather than changing the zone. It seems to put the adjacent residential property owners in a very untenable position. This is the only control they have--i.e., public opposition. He believes the developer should suffer the consequences.

Motion for conditional approval, as amended, carried 5-1: Wilson, Wallace, Duvall, Schwinn and Bayer voting 'yes'; Steward voting 'no'; Bleed, Hopkins and Krieser absent.

**MISCELLANEOUS NO. 99001**  
**TO VACATE ALL OF WILLIAMSBURG VILLAGE**



**17<sup>TH</sup> ADDITION, GENERALLY LOCATED AT  
APPROXIMATELY SO. 40<sup>TH</sup> & PINE LAKE ROAD.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 10, 1999

Members present: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer; Bleed, Hopkins and Krieser absent.

Schwinn moved approval of the staff recommendation, seconded by Wilson and carried 6-0: Wilson, Wallace, Duvall, Schwinn, Steward and Bayer voting 'yes'; Bleed, Hopkins and Krieser absent.

**ITEMS NOT APPEARING ON THE AGENDA**

John Bradley, the Interim Director of Planning, submitted a copy of proposed Legislative Bill 367 that has been through Committee. This would affect the membership of the Planning Commission, requiring that one of members must be a resident of the three-mile jurisdiction. Mr. Bradley noted that this bill would provide that that member would be appointed by the County Commissioners rather than by the Mayor and City Council. Mr. Bradley pointed out that the matters in the three-mile area are out of the County's jurisdiction and it would not be appropriate to have the County Board make this appointment.

Mr. Bradley suggested that any comments to this bill by the Commissioners be forwarded to him as soon as possible.

There being no further business, the meeting was adjourned at 1:50 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on January 13, 1999.